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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,765	07/25/2001	Igor Muttik	01.042.01	5011
23117 7590 12/13/2005 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER DERWICH, KRISTIN M	
			ART UNIT 2132	PAPER NUMBER
DATE MAILED: 12/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/911,765

Applicant(s)

MUTTIK ET AL.

Examiner

Kristin Derwich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-45 are pending.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “20” has been used to designate both Divide scan into n tasks and identify other computers to issue (n-1) tasks to and Own task complete. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

2. Claims 9, 24 and 39 objected to because of the following informalities: The word of appears in line 2 of the claims where the word “or” is expected. Appropriate correction is required.

#### ***Double Patenting***

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 7, 13, 16, 22, 28, 31, 37 and 43 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 24, 26, 27, 46, 48 and 49 of copending Application No. 09/881,058 ('058). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 34 and 46 of '058 disclose claims 1, 16 and 31 of the instant application comprising:

(i) scan request receiving logic operable to receive a request to perform an on-access malware scan upon a computer file to which access is to be made;

(ii) scan dividing logic operable to divide said on-access malware scan into a plurality of tasks;

(iii) task issuing logic operable to issue said plurality of tasks to be performed by a plurality of different computers; and

(iv) result collating logic operable to collate a plurality of task results corresponding to said plurality of tasks and received from said plurality of different computer to form a scan result corresponding to said on-access malware scan.

Claims 3, 4, 26, 27, 48 and 49 of '058 disclose claims 7, 22 and 37 of the instant application comprising:

- (i) a computer virus;
- (ii) a Trojan computer program;
- (iii) a worm computer program;
- (iv) a banned computer program; and
- (v) an e-mail containing banned content.

Claims 16, 39 and 60 of '058 disclose claims 13, 28 and 43 of the instant application comprising:

- (i) task receiving logic operable to receive a request to perform a malware scanning task that is part of an on-access malware scan of a computer file requested by another computer;
- (ii) scanning logic operable to perform said malware scanning task; and
- (iii) result returning logic operable to return a result of said malware scanning task.

Although the wording is slightly different the scope of the claims are the same.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5-8, 12, 13, 15, 16, 20-23, 27, 28, 31, 35-38, 42 and 43 rejected under 35

U.S.C. 102(e) as being anticipated by Gryaznov et al. (Gryaznov), U.S. Patent No. 6,748,534.

As per claims 1, 7, 13, 16, 22, 28, 31, 37 and 43:

Gryaznov discloses a computer program product comprising:

A plurality of files, scan initiating logic, scan dividing logic, task issuing logic, task result logic and scan merging logic (abs., figs. 3-4c, 2:43-67, cols. 5-6, 7:1-42). Specific characteristics such as a worm or Trojan computer program (cols. 5-7).

As per claims 5, 6, 15, 20, 21, 35 and 36:

Gryaznov discloses a computer program product wherein the scan dividing logic divides the scan into a plurality of scans for identifying different properties of a computer file, said plurality of scans being separately performed as said plurality of tasks wherein said tasks seek to identify different portions of one of a cryptographic analysis and an emulation analysis (6:1-13).

As per claims 8, 23 and 38:

Gryaznov discloses a computer program product wherein the one or more tasks are further divided into sub-tasks (7:26-34).

As per claims 12, 27 and 42:

Gryaznov discloses a computer program product wherein the result collating logic terminates any outstanding tasks if a task result is received indicating detection of malware within said computer file (7:36-45).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 9-11, 14, 17-19, 24-26, 29, 32-34, 39-41 and 44 rejected under 35 U.S.C. 103(a) as being unpatentable over Gryaznov (U.S. 6,748,534) as applied to claims 1, 7, 13, 16, 22, 28, 31, 37 and 43 above, and further in view of Gartside, U.S. Patent No. 6,851,058.

As per claims 2-4, 14, 17-19, 29, 32-34 and 44:

Gryaznov fails to teach computer files being divided into component files that contain embedded computer files to also be component computer files wherein the computer file is one of a given list of types. However, Gartside discloses a method wherein a computer file is an archive file and the archive file is broken down into its component files which are further broken down if embedded files exist in order to be scanned (3:40-48, 4:39-48, 1:53-63).

As per claims 9-11, 24-26 and 39-41:

Gryaznov fails to teach where a task is selected to be issued to another computer in dependence upon one of a variety of reasons and the scan dividing logic does not divide the scan if the scan is detected as having a complexity below a predetermined threshold level and where

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the complexity is determined as a function of one or more of a list. However, Gartside discloses an archive file not being divided if it is below a certain complexity level (6:17-65) wherein the complexity level is determined as a function of the archive file (6:17-65), and a scan being selected to happen depends upon the storage space available (4:61-5:6).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the distributed scanning invention of Gryaznov with the archive scanning of Gartside because if the news database contained files with embedded files they could utilize a severe amount of processing power and memory space in order to scan through all of them (Gartside, 1:64-2:6). Therefore, the division of the embedded archive files would allow the news database to provide the processing and bandwidth throughput required by a growing dataset (Gryaznov, 2:33-40).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin Derwich whose telephone number is 571-272-7958. The examiner can normally be reached on Monday - Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 2132

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